	¨ÉAUÀ¼ÀÆgÀÄ «zÀÄåvï ¸ÀgÀ§gÁdÄ PÀA¥À¤ ¤AiÀÄ«ÄvÀ **Bangalore Electricity Supply Company Limited** (PÀ£ÁðlPÀ ¸ÀPÁðgÀzÀ ¸ÀA¥ÀÆtð ¸ÁéªÀÄåPÉÌ M¼À¥ÀnÖzÉ)	
zÀÆgÀªÁtÂ ¸ÀASÉå : 080 22354939. **EªÉÄÃ¯ï «¼Á¸À :** *cgmproc@bescom.co.in* **®UÀvÀÄÛ :**	Azadi Ka Amrit Mahotsav	**ªÀÄÄRå ¥ÀæzsÁ£À ªÀåªÀ¸ÁÜ¥ÀPÀgÀÄ («) gÀªÀgÀ PÀbÉÃj, RjÃ¢ ±ÁSÉ, 2£ÉÃ ªÀÄºÀr, PÀA¥À¤ PÁAiÀiÁð®AiÀÄ, PÉ.Dgï ªÀÈvÀÛ, ¨ÉAUÀ¼ÀÆgÀÄ-560 001.** **¢£ÁAPÀ:**

SECTION-III

GENERAL TERMS AND CONDITIONS OF CONTRACT

Tender for Procurement of Vehicle Mounted Fully Automatic Underground Cable Fault Locating Equipment Suitable for Locating Fault as per Tender Specifications. (Capacity – 2000 Joules).

1. Definitions

1.1 In this Contract, the following terms shall be interpreted as indicated:

(a) "The **Contract"** means Terms & Conditions specified in Purchase Order and Tender documents;

(b) "The **Contract Price**" means the price payable to the Supplier under the Contract for the full and proper performance of its contractual obligations;

(c) **CONTRACT/DELIVERY PERIOD:** The contract period is the period for supplying the material as per the terms and conditions of bid document and Purchase Order. In case of extended contract period at the request of the supplier, the owner at his discretionary may extend the currency period for supply of material abiding by the terms and conditions of initial contract period without the benefit such as price variation, tax increase etc., if any.

(d) **DESTINATION:** Destination means F.O.R delivery at Stores/Site, as intimated by the OWNER and its representative.

(e) **"Day"** means calendar day.

(f) "The **Goods**" means all the equipment, machinery, and/or other materials which the Supplier is required to supply to the Purchaser under the Contract;

(g) "The **Government"** means the Government of Karnataka State.

(h) **"GCC"** means the General Conditions of Contract contained in this section.

(i) **INSPECTOR:** Inspector means the OWNER's representative, duly authorized or appointed in writing to act as inspector for the purpose of Contract

(j) **BESCOM**: BESCOM means Bangalore Electricity Supply Company Limited

(k) **MONTH:** Month means Calendar month.

(l) **OEM:** The Original Equipment Manufacturer of any goods including articles/equipment/system/software/product which are providing such goods to the Purchaser under the scope of this Tender Document;

(m) **OWNER**: The Bangalore Electricity Supply Company Limited is the Owner.

(n) **Purchaser:** The organization purchasing the Goods. Bangalore Electricity Supply Company Limited is the Purchaser and shall include their Legal Representatives, Successors and Assigns.

(o) "The Purchaser's country" is the country named in SCC.

(p) "The Project Site", where applicable, means the place or places mentioned in Dispatch Instruction given to successful Bidder. The goods are to be delivered to the destinations within Karnataka which will be notified at the time of issue of dispatch instructions.

(q) "SCC" means the Special Conditions of Contract by which these General Conditions of Contract may be supplemented.

(r) "Services" means services ancillary to the supply of the Goods, such as transportation and insurance, and any other incidental services, such as supervision of installation, commissioning wherever applicable, provision of technical assistance, training and other obligations of the Supplier covered under the Contract;

(s) "The Supplier/Successful Bidder/ Contractor" means the individual or firm supplying the Goods under this Contract.

(t) **SPECIFICATIONS**: Specifications annexed to this general condition, schedules read with relevant ISS, BSS, and IEC specified.

(u) **BIDDER/BIDDER**: Bidder/Bidder means the party who has purchased and submitted the Tender documents.

2. Application

2.1 These General Conditions shall apply to the extent that they are not superseded by provisions in other parts of the Contract.

3. Standards

3.1 The Goods supplied under this Contract shall conform to the standards mentioned in the Technical Specifications, and, when no applicable standard is mentioned, to the authoritative standard appropriate to the Goods' country of origin and such standards shall be the latest issued by the concerned institution.

4. Use of Contract Documents and Information; Inspection and Audit by the Government/BESCOM

4.1 The Supplier shall not, without the Purchaser's prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample or information furnished by or on behalf of the Purchaser in connection therewith, to any person other than a person employed by the Supplier in performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.

4.2 The Supplier shall not, without the Purchaser's prior written consent, make use of any document or information enumerated in GCC Clause 4.1 except for purposes of performing the Contract.

4.3 Any document, other than the Contract itself, enumerated in GCC Clause 4.1 shall remain the property of the Purchaser and shall be returned (in all copies) to the Purchaser on completion of the Supplier's performance under the Contract if so required by the Purchaser.

4.4 The supplier shall permit the Government/BESCOM to inspect the Supplier's accounts and records relating to the performance of the Supplier and to have them audited by auditors appointed by the Government/BESCOM, if so required by the Government/BESCOM.

5. Supplier's Obligations

5.1 Patent Rights

The Supplier shall indemnify the Purchaser against all third-party claims of infringement of patent, trademark or industrial design rights arising from use of the Goods or any part thereof in India.

5.2 Changes in Constitution/financial stakes/responsibilities of Supplier's Business

The Supplier must proactively keep the Purchaser informed of any changes in its constitution/financial stakes/responsibilities during the execution of the contract. Where the supplier is a partnership firm, the following restrictions shall apply to changes in the constitutions during the execution of the contract:

a) A new partner shall not be introduced in the firm except with the previous consent in writing of the Purchaser, which shall be granted only upon execution of a written undertaking by the new partner to perform the contract and accept all liabilities incurred by the firm under the contract before the date of such undertaking.

b) On the death or retirement of any partner of the supplier firm before the complete performance of the contract, the Purchaser, may, at his option, terminate the contract for

default as per the Contract and avail any or all remedies thereunder.

c) If the contract is not terminated as provided in Sub-clause (b) above notwithstanding the retirement of a partner from the firm, that partner shall continue to liable under the contract for acts of the firm until a copy of the public notice given by him under Section 32 of the Partnership Act, has been sent by him to the Purchaser, in writing or electronically.

5.3 Obligation to Maintain Eligibility and Qualifications

a) The contract has been awarded to the supplier based on specific eligibility and qualification criteria. The supplier is contractually bound to maintain such eligibility and qualification during the execution of the contract. Any change which would vitiate the basis on which the contract was awarded to the supplier should be pro-actively brought to the notice of the Purchaser, within 7 days of it coming to the Supplier's knowledge. These changes include but are not restricted to:

b) Change regarding information furnished by it in its Tender Documents.

5.4 Permits, Approvals and License

Whenever the supply of Goods and incidental Works/Services (including preventive and breakdown maintenance) requires that the supplier obtain permits, approvals and licenses from local public authorities, it shall be the supplier's sole responsibility to obtain these and keep these current and valid. Such requirements may include but not be restricted to export/import licence or environmental clearance if required. If requested by the supplier, the Purchaser shall make its best effort to assist the supplier in complying with such requirements in a timely and expeditious manner, without any dilution of the Supplier's responsibility in this regard.

5.5 Confidentiality

All documents, drawings, samples, data, associated correspondence or other information furnished by or on behalf of the Purchaser to the supplier, in connection with the contract, whether such information has been furnished before, during or following completion or termination of the contract, are confidential and shall remain the property of the Purchaser and shall not, without the prior written consent of Purchaser neither be divulged by the supplier to any third party, nor be used by him for any purpose other than the design, procurement, or other services and work required for the performance of this Contract. If advised by the Purchaser, all copies of all such information in original shall be returned on completion of the supplier's performance and obligations under this contract.

5.6 Secrecy

The subject matter of this contract is secret as per the Official Secrets Act, 1923 or if the contract is marked as "Secret", the supplier shall take all reasonable steps necessary to ensure that all persons employed in any connection with the contract, have acknowledge their responsibilities and penalties for violations under the Official Secrets Act and any regulations framed thereunder.

6. Performance Security/Contract Performance Guarantee:

6.1 Within 14 days from the date of issue of the notification of contract award (LOI), the Successful Bidder/Supplier shall furnish Performance Security to the Purchaser for an amount of **5% of the total contract value**, which is valid up to 90 days after the date of completion of performance obligations including Warranty/ guarantee obligations. In the event of the contractor failing to deposit such security within 14 days from the date of letter of intent, the Earnest Money Deposited with the tender shall be forfeited to the BESCOM who shall have full discretion to cancel the LOI communicated to the said bidder.

NOTE: The Bidder will be blacklisted, if the performance bank guarantee turns out to be fake during confirmation from the bank regarding genuineness of BG submitted by the bidder.

6.2 The proceeds of the performance security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.

6.3 The Performance Security shall be denominated in Indian Rupees and shall be in one of the following forms:

(a) As a Contract Performance Guarantee, the successful Bidder on whom the Letter of Intent is placed shall be required to furnish a Performance Guarantee from a Public Sector Indian Bank/ Scheduled commercial Bank (in the second schedule of the RBI Act 1934) and the Bank should be covered under the jurisdiction of Indian Laws.

i) Guarantee amount below Rs.5,000/- in Demand Draft.

ii) Guarantee amount of Rs.5,000/- and above, in Demand Draft or Bank Guarantee which shall be valid for a period of 90 days after expiry of the warranty period.

If the Bank Guarantees towards Bid Security (EMD) and Contract Performance Guarantees are issued by Banks through Structured Financial Messaging System (SFMS), necessary Charges and Bank details shall be furnished by the Bidder.

6.4 The Performance Security will be discharged by the Purchaser and returned to the Supplier not later than 90 days following the date of completion of the Supplier's performance

obligations, including any Warranty/guarantee obligations, under the Contract.

6.5 In the event of any contract amendment, the Supplier shall, within 21 days of receipt of such amendment, furnish the amendment to the Performance Security, rendering the same valid for the duration of the Contract as amended for 90 days after the completion of performance obligations including Warranty/guarantee obligations.

6.6 The Purchaser shall be entitled, and it shall be lawful on his part,

a) to deduct from the performance securities or to forfeit the said security in whole or in part in the event of;

i) any default, or failure or neglect on the part of the supplier in the fulfillment or performance in all respect of the contract under reference or any other contract with the Purchaser or any part thereof.

ii) for any loss or damage recoverable from the supplier which the Purchaser may suffer or be put to for reasons of or due to above defaults/failures/neglect.

iii) for corrupt and fraudulent practices of supplier.

b) And in either of the events aforesaid to call upon the supplier to maintain the said performance security at its original limit by making further deposits, provided further that the Purchaser shall be entitled, and it shall be lawful on his part, to recover any such claim from any sum then due or which at any time after that may become due to the supplier for similar reasons.

6.7 The Purchaser shall release the performance security subject to the sub- clause above without any interest to the supplier on completing all contractual obligations, including the warranty obligations, if any.

6.8 The Bank Guarantee furnished against security deposit shall be valid till the expiry of 90 days after the end of guarantee period.

7. Inspections and Tests

7.1 The Purchaser or its representative shall have the right to inspect and/or to test the Goods to confirm their conformity to the Contract specifications at no extra cost to the Purchaser. SCC and the Technical Specifications shall specify what inspections and tests the Purchaser requires and where they are to be conducted. The Purchaser shall notify the Supplier in writing in a timely manner of the identity of any representatives retained for these purposes.

7.2 The inspections and tests may be conducted on the premises of the manufacturer and at the Goods final destination. All reasonable facilities and assistance, including access to drawings and production data - shall be furnished to the inspectors (3 Nos. of BESCOM Officials) at no charge to the Purchaser.

7.3 Should any inspected or tested Goods fail to conform to the specifications, the Purchaser may reject the goods and the Supplier shall either replace the rejected Goods or make alterations necessary to meet specification requirements free of cost to the Purchaser.

The supplier shall put up the goods for inspection well ahead of the delivery period to complete the inspection in respect of the conditions of pre dispatch inspection of ordered goods at supplier's premises provided in the contract.

7.4 The Purchaser's right to inspect, test and, where necessary, reject the Goods after the Goods' arrival at Project Site shall in no way be limited or waived by reason of the Goods having previously been inspected, tested and passed by the Purchaser or its representative prior to the Goods shipment.

7.5 Nothing in GCC Clause 7 shall in any way release the Supplier from any warranty/Guarantee or other obligations under this Contract.

7.6 Manuals and Drawings

7.6.1 Before the goods and equipment are taken over by the Purchaser, the Supplier shall supply operation and maintenance manuals together with drawings of the goods and equipment. These shall be in such detail as will enable the Purchaser to operate, maintain, adjust and repair all parts of the equipment as stated in the specifications.

7.6.2 The manuals and drawings shall be in the ruling language (English) and in such form and numbers as stated in the contract.

7.6.3 Unless and otherwise agreed, the goods and equipment shall not be considered to be completed for the purpose of taking over until such manuals and drawings have been supplied to the Purchaser.

8. Packing

8.1 The Supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination as well as storage till its laying and testing as indicated in the contract. The packing shall be sufficient to withstand, without limitations, rough handling during transit by road, and/or rail and exposure of rain, humidity, extreme temperatures, salt and precipitation during transit and open storage for long durations till the time of laying. Packing case size and weights shall be determined taking into consideration where appropriate, the remoteness of the goods final destination and the transit and the availability of handling facility at all points, availability of the various trucks/trailers for transportation. The BESCOM shall not entertain any claim whatsoever, in this regard.

8.2 The packing, marking and documentation within and outside the packages shall comply strictly with such special requirements as shall be provided for in the Contract including additional requirements, if any, specified in SCC and in any subsequent instructions ordered by the Purchaser.

8.3 Packing Instructions: The Supplier will be required to make separate packages for each Consignee. Each Package will be marked on three sides with proper paint/indelible ink the following:

i) Name of the Purchaser; Purchase Order number and date,

ii) Brief description of Goods including quantity

iii) The gross weight of the package

iv) Packing List Reference number.

v) Country of origin of goods

vi) Consignee's name and full address and

vii) Contractor's/Supplier's name and address

viii) Guarantee period.

8.4 In case of damage to the equipment and materials due to improper packing, the supplier shall be held responsible for the same and the supplier shall replace the material by a new one without any extra cost to BESCOM.

8.5 FORWARDING AND SHIPMENT:

8.5.1 The Supplier shall notify the BESCOM of the date of each dispatch from its works and the expected date of arrival at the site for the information of BESCOM.

The Supplier shall also give all dispatch information concerning the weight, size and content of each package including any other information BESCOM may require.

8.5.2 The Supplier shall prepare detailed packing list of all packages and containers, bundles and loose materials forming each and every consignment dispatched to sites.

8.6 Demurrage, Wharfage, etc.

All demurrage, wharfage and other expenses incurred after the equipment and materials reach the site, due to delayed furnishing of dispatch documents or any other reason attributable to the contractor, and shall be to the account of the contractor/supplier.

9. Delivery and Documents

9.1 Delivery of the Goods shall be made by the Supplier in accordance with the terms specified by the Purchaser in the Notification of Award. The details of shipping and/or other documents to be furnished by the supplier are specified in

SCC.

10. Insurance

10.1 The Goods supplied under the Contract shall be fully insured in Indian Rupees against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery. For delivery of goods at site, the insurance shall be obtained by the Supplier in an amount equal to 110% of the value of the goods from "warehouse to warehouse" (final destinations) on "All Risks" basis including War risks and Strikes.

10.2 The Supplier shall arrange for the transit insurance of the goods with their own under writers and include the same in the price quoted by them.

10.3 The policy shall be taken out in the name of the supplier and the supplier shall pursue claims with the insurances themselves, in case of shortage/breakages/damages or other claims. The supplier shall however arrange for immediate replacements of materials received short/damaged/broken etc., without waiting for settlement of their insurance claims.

10.4 The ownership and responsibility for the materials rests with the suppliers till the goods are delivered safely at destination.

11. Transportation

11.1 Where the Supplier is required under the Contract to transport the Goods to a specified place of destination within India defined as Project site, transport to such place of destination in India including insurance, as shall be specified in the Contract, shall be arranged by the Supplier, and the related cost shall be included in the Contract Price.

12. Incidental Services

12.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:

(a) Supervision of erection and commissioning, wherever applicable is in the scope of the Supplier/Bidder and shall be carried out free of cost.

(b) furnishing of detailed operations and maintenance manual for each appropriate unit of supplied Goods;

(c) Training of the Purchaser's personnel, at the Supplier's plant and/or on- site, in assembly, start-up, operation, maintenance and/or repair of the supplied Goods.

13. Spare Parts

13.1 As specified in the SCC, the Supplier may be required to provide any or all of the following materials, notifications, and

information pertaining to spare parts manufactured or distributed by the Supplier:

(a) such spare parts as the Purchaser may elect to purchase from the Supplier, providing that this election shall not relieve the Supplier of any warranty obligations under the Contract; and

(b) In the event of termination of production of the spare parts:

(i) advance notification to the Purchaser of the pending termination, in sufficient time to permit the Purchaser to procure needed requirements; and

(ii) following such termination, furnishing at no cost to the Purchaser, the blueprints, drawings and specifications of the spare parts, if requested.

13.2 The Supplier shall carry sufficient inventories to assure ex-stock supply of consumable spares for the Goods, such as gaskets, plugs, washers, belts etc. Other spare parts and components shall be supplied as promptly as possible but in any case within 3 months of placement of order.

14. Guarantee/Warranty:

14.1 The Supplier shall guarantee that the Goods supplied under this Contract are new, unused, of the most recent or current models and that they incorporate all recent improvements in design and materials unless provided otherwise in the Contract. The Supplier further guarantee that all Goods supplied under this Contract shall have no defect arising from design, materials or workmanship (except when the design and/or material is required by the Purchaser's Specifications) or from any act or omission of the Supplier, that may develop under normal use of the supplied Goods in the conditions prevailing in the country of final destination.

14.2 This guarantee shall remain valid for satisfactory performance and against failure due to bad design, bad materials, defective manufacture or bad workmanship for **a period of 5 (five) years from the date of satisfactory installation/ commissioning/ demonstration of equipment** and should cover free service (service centres should be in India) and spares. Repair within Guarantee period shall be at suppliers cost including F&I, Courier etc. The guarantee period shall commence from the date of satisfactory installation/commissioning/demonstration at the consignee division. The bidder shall agree to make good or replace at his own cost any /parts or the whole equipment that fail during the said period. The Supplier shall, in addition, comply with the performance and/or consumption guarantees specified under the Contract. If for reasons attributable to the Supplier, these guarantees are not attained in whole or in part, the Supplier shall make such changes, modifications, and/or additions to the Goods or any part thereof as may be necessary in order to attain the

contractual guarantees specified in the Contract at its own cost and expense and to carry out further performance tests in accordance with SCC Clause 2;

14.3 The Purchaser shall promptly notify the Supplier in writing of any claims arising under this Guarantee.

14.4 Upon receipt of such notice, the Supplier shall, within the period of One month and with all reasonable speed, repair or replace the defective Goods or parts thereof, free of cost at the ultimate destination. The Supplier shall take over the replaced parts/goods at the time of their replacement. No claim whatsoever, shall lie on the Purchaser for the replaced parts/goods thereafter. In case, the equipment has to be carried to the supplier's site for carrying out repairs then the 'to and fro' expenses together with the associated expenses shall be borne by the supplier. In the event of any correction of defects or replacement of defective material during the Guarantee period, the Guarantee for the corrected or replaced material/ equipment shall be extended. In such an event, the guarantee period shall be extended to an extent for which the equipment was not available to the BESCOM for its use and extend the validity of Performance BG for the said period. The responsibility to collect the defective/ rejected material will lie with the supplier and the cost for such collection will have to be borne by the supplier.

14.5 If the Supplier, fails to replace the defective/ failed equipments as per above guarantee clause within the stipulated time therein, the BESCOM reserves the right to extend the guarantee period by a period equivalent to the downtime of the equipment over and above one month.

If the defective/failed equipments are not replaced/ repaired as per guarantee clause, BESCOM shall recover an equivalent amount plus 15% supervision charges from any of the supplier's bills **or** from the amount of performance Bank Guarantee.

14.6 Further, the successful Bidder/ Supplier shall provide the **latent defect warranty** for the equipments/materials for a period of **18 months from the date of expiry of the above guarantee period.**

14.7 AFTER SALES SERVICE AND SUPPLY OF SPARES:

The offer should clearly state full details of the after sales facility available for the equipment in India. The details shall include the No. & qualification of service personnel stationed at the service center, response time in case of emergency, availability of spares etc.

The Supplier shall guarantee prompt after sales service by deputing his personnel on requisition from the officers of BESCOM and supply the spares within a reasonable time at his scheduled rates for minimum period of 5 (five) years after

commissioning of the equipment and after the expiry of warranty period.

15. Payment

15.1 The method and conditions of payment to be made to the Supplier under the Contract is as specified in SCC.

15.2 The Supplier's request(s) for payment shall be made to the Purchaser in writing, accompanied by an invoice describing, as appropriate, the Goods delivered and the Services performed, and by documents, submitted pursuant to GCC Clause 9, and upon fulfillment of other obligations stipulated in the contract.

15.3 Payments shall be made promptly by the Purchaser after submission of the invoice or claim by the Supplier.

15.4 Payment shall be made in Indian Rupees.

16. Prices:

16.1 Prices quoted by the Bidder shall remain **FIRM** and **fixed** during the Bidder's performance of the Contract and shall not be subject to variation on any account.

The prices should be quoted F.O.R at destination in Indian Rupees inclusive of packing, forwarding, handling, insurance, documentation, installation & commissioning charges etc. and all taxes. In case of imported goods, the bidder shall quote the total price considering Net F.O.B/F.A.S. value, insurance & freight and clearing/handling charges at the Indian Port, custom clearance and charges for dispatch up to destination. Custom clearance and all necessary procedures have to be done by the bidder including any financial implications.

17. Change Orders

17.1 The Purchaser may at any time, by written order given to the Supplier pursuant to GCC Clause 31, make changes within the general scope of the Contract in any one or more of the following:

(a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;
(b) the method of shipping or packing;
(c) the place of delivery; and/or

18. Contract Amendments

18.1 Subject to GCC Clause 17, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

19. Assignment

19.1 The Supplier shall not assign, in whole or in part, its

obligations to perform under the Contract, except with the Purchaser's prior written consent.

20. Delays in the Supplier's Performance

20.1 Delivery of the Goods and performance of the Contract shall be made by the Supplier in accordance with the time schedule specified by the Purchaser in the Schedule of Requirements. Delay by the contractor in the performance of the obligations under the contract shall render the contractor liable for any or all the following sanctions: forfeiture of its performance security, imposition of penalty and/or termination of contract for default as detailed hereunder.

20.2 If at any time during performance of the Contract, the Supplier or its sub- contractor(s) should encounter conditions impeding timely delivery of the Goods and performance of Services, the Supplier shall promptly notify the Purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the Supplier’s notice, the Purchaser shall evaluate the situation and may, at its discretion, extend the Supplier’s time for performance with or without liquidated damages/penalty, in which case the extension shall be ratified by the parties by amendment of the Contract.

20.3 Except as provided under GCC Clause 24, a delay by the Supplier in the performance of its delivery obligations shall render the Supplier liable to the imposition of liquidated damages/penalty pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of liquidated damages/penalty.

20.4 No increases in price on account of any statutory increase in or fresh imposition of GST, customs duty or on account of any other taxes/duty/cess/levy, leviable in respect of the Goods and incidental supplies/Works/Services stipulated in the said contract which takes place after the original delivery date, shall be admissible on such of the said Goods, as are delivered after the said date;

20.5 Not withstanding any stipulation in the contract for an increase in price on any other ground, including price variation clause or foreign exchange rate variation, or any other variation clause, no such increase after the original delivery date shall be admissible on such goods delivered after the said date

20.6 Nevertheless, the Purchaser shall be entitled to the benefit of any decrease in price on account of reduction in or remission of GST, customs duty or on account of any other Tax or duty or any other ground as stipulated in the price variation clause or foreign exchange rate variation or any

other variation clause which takes place after the expiry of the original delivery date.

20.7 Failure to Supply

Failing to supply as above, BESCOM, is at liberty, after giving due written notice to the contractor/supplier to purchase the same or any portion thereof on to the account of and at the risk of the Contractor/supplier and to prefer a claim for the difference in price and for all expenses whatsoever incurred in purchasing the same, which the BESCOM is wholly authorized to recover from any money due to contractor/supplier on bills, or deposits or any account.

21. <u>Liquidated damages/Penalty for Delay in Supplies</u>

21.1 Subject to GCC Clause 24, if the Supplier fails to deliver any or all of the Goods or to perform the Contract within the period(s) specified in the Contract, the Purchaser shall, without prejudice to its other remedies under the Contract, deduct from the Contract Price, as Liquidated damages/penalty, a sum equivalent to 0.5% of the delivered price of the delayed Goods or unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of 10% of the Contract Price. Once the maximum is reached, the Purchaser may consider termination of the Contract pursuant to GCC Clause 23.

However, due consideration will be given in the levy of penalty for reasons absolutely beyond the control of the contractor/ supplier (Force Majeure) for which documentary evidence shall invariably be produced to the satisfaction of the competent authority of the Corporation.

The total amount of penalty for delay under the contract shall be subject to a maximum of ten percent (10%) of the total contract price and CGST & SGST/ IGST at prevailing rate and the owner has got every right to terminate the contract without any liability if it crosses 10%.

21.2 Recovery of Penalty:

The following procedure shall be adopted for recovery of the penalty amount at prescribed rate from the supplier for delay in completion of the deliveries/Commissioning/demonstration:-

a) Calculate the penalty recoverable from supplier as per purchase order terms and conditions for those supplies delayed beyond contractual delivery period.

b) Limit the recovery of penalty to 10% of each bill value admitted in case of supply bills.

c) If the total penalty to be recovered is not fully recovered under Supply bills, the balance penalty has to be recovered from any money due to

contractor/supplier on bills, or deposits or any account.

In case the delay in deliveries by the supplier is condoned by BESCOM, penalty levied shall be returned back without any interest to the supplier by the Jurisdictional Chief Engineer.

21.3 Request for delay condonation by the bidder:

The Supplier shall submit a request for condonation of delay if any within Twelve (12) months from the date of supply of materials with valid reasons and documentary proof.

Under no circumstances, the request for condonation of delay will be considered if no such request is made by the Supplier within a period of Twelve (12) months from the date of supply of materials.

22. Termination of Contract for Default of Supplier

22.1 The Purchaser may, without prejudice to any other remedy for breach of contract, by written notice of default sent to the Supplier, terminate the Contract in whole or part:

(a) if the Supplier fails to deliver any or all of the Goods within the period(s) specified in the Contract, or within any extension thereof granted by the Purchaser pursuant to GCC Clause 21; or

(b) if the Supplier fails to perform any other obligation(s) under the Contract.

(c) If the Supplier, in the judgment of the Purchaser has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purpose of this Clause:

i. “Corrupt practice” means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.

ii. “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Borrower, and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Borrower of the benefits of free and open competition.

(d) If the contractor is a company being wound up voluntarily or by order of a Court or a Receiver, Liquidator or Manager on behalf of the Debenture-holders is appointed, or circumstances shall have arisen which entitle the Court or Debenture-holders

to appoint a Receiver, Liquidator or Manager.

(e) if the Purchaser, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

22.2 In the event the Purchaser terminates the Contract in whole or in part, pursuant to GCC Clause 23.1, the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Services similar to those undelivered, and the Supplier shall be liable to the Purchaser for any excess costs for such similar Goods or Services. However, the Supplier shall continue the performance of the Contract to the extent not terminated.

22.3 In case the supplier fails to supply the materials/ equipment within the contracted period of delivery or in case the material/ equipment supplied are found not in accordance with prescribed specifications and / or approved sample or in case the supplier has supplied any part consignment and failed to supply the balance within the contracted delivery period, the BESCOM shall exercise is discretionary powers on any or all the following:

The BESCOM shall have the powers:

i) To recover from the supplier as agreed by way of penalty clause (22) above and,

ii) To purchase elsewhere after giving due notice to the contractor, at the cost and risk of the contractor such items/Goods are not so delivered to stores or others of a similar description without canceling the contract in respect of the consignment not yet due for delivery, but the supplier shall not be entitled to any savings on such purchases made against default.

iii) To cancel the contract.

iv) Forfeiture of performance Security Deposit.

v) To blacklist or not to consider the suppliers future offers for a specified period.

23. Force Majeure

23.1 Notwithstanding the provisions of GCC Clauses 21, 22, 23, the Supplier shall not be liable for forfeiture of its performance security, liquidated damages/penalty or termination for default, if and to the extent that, its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

23.2 For purposes of this Clause, "Force Majeure" means an event beyond the control of the Supplier and not involving the Supplier's fault or negligence and not foreseeable. It is an event which could not reasonably have been avoided by a diligent party in the circumstances, which is beyond the reasonable control of a party and which makes a party's

performance of its responsibilities hereunder impossible or so impractical as reasonable to be considered impossible in the circumstances. Such events may include, but are not limited to, acts of the Purchaser either in its sovereign or contractual capacity, wars or revolutions, riots/civil disorder, earthquake, storm, fires, floods or other adverse weather conditions, epidemics, quarantine restrictions ~~and~~ freight embargoes, strikes, lockouts or other industrial action, electrical failure, confiscation or any other action by Government Agencies.

23.3 If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such conditions and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

23.4 Force majeure shall not include any event which is caused by the negligence or intentional action of a party or such party's sub-contractors or agents or employees, or by a failure to observe good engineering practices.

23.5 Force Majeure shall not include insufficiency of funds of failure to make any payment required hereunder.

24. Termination for Insolvency

24.1 The Purchaser may at any time terminate the Contract by giving written notice to the Supplier, if the Supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Purchaser.

25. Termination for Convenience

25.1 The Purchaser, by written notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.

25.2 The Goods that are complete and ready for shipment within 30 days after the Supplier's receipt of notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:

(a) to have any portion completed and delivered at the Contract terms and prices; and/or

(b) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and for materials and parts previously procured by the Supplier.

25.3 All warranty/Guarantee obligations, if any, shall continue to survive despite the termination.

25.4 The contractor upon receipt of such notice shall discontinue the supply on the date and to the extent specified in the notice, make all reasonable efforts to obtain cancellation of all orders and the sub contracts to the extent they are related to the supply terminated and upon terms satisfactory to the BESCOM stop all further sub-contracting or purchasing activity related to the supply terminated and assist the BESCOM in storage, maintenance and protection, and disposition of the goods acquired under the contract by BESCOM.

25.5 In the event of such a termination, the contractor shall be paid equitable and reasonable compensation as decided by the circumstances prevalent at the time of termination.

26. Settlement of Disputes

26.1 The Purchaser and the supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.

26.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Purchaser or the Supplier may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given.

26.2.1 Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the Goods under the Contract.

26.2.2 Arbitration proceedings shall be conducted in accordance with the rules of procedure specified.

26.3 Notwithstanding any reference to Arbitration herein,

(a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and

(b) The Purchaser shall pay the Supplier any monies due the Supplier.

27. Limitation of Liability

27.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 5,

(a) the Supplier shall not be liable to the Purchaser, whether in contract, tort, or otherwise, for any

indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay Liquidated damage/penalty to the Purchaser; and

(b) the aggregate liability of the Supplier to the Purchaser, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

28. Governing Language

28.1 The contract shall be written in English language. Subject to GCC Clause 30, English language version of the Contract shall govern its interpretation. All correspondence and other documents pertaining to the Contract which are exchanged by the parties shall be written in the same language.

29. Applicable Law/ EFFECT AND JURISDICTION OF CONTRACT:

29.1 The Contract shall be interpreted in accordance with the laws of the Union of India. The Courts of **Bengaluru in Karnataka State** shall have exclusive jurisdiction in all matters arising under the contract.

29.2 The contract shall be considered as having come into force from the date of "Notification of Award"/"Letter of Intent" unless otherwise provided in the "Notification of Award".

30. Notices

30.1 Any notice given by one party to the other pursuant to this Contract shall be sent to other party in writing or by e-mail.

30.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.

31. Taxes and Duties

31.1 Taxes and Duties

a) The Supplier shall be entirely responsible to pay for all taxes, duties, fees, levies etc., incurred until delivery of the Goods to the Purchaser.

b) Payment of GST Tax under the contract:

i. The payment of GST and GST Cess to the Supplier shall be made only on the latter submitting a GST compliant bill/invoice indicating the appropriate HSN code and applicable GST rate thereon duly supported with documentary evidence as per the provision of relevant GST Act and the Rules made there under. The delivery of Goods shall be shown being made in the name, location/state, and GSTIN of the Supplier only; the location of the procurement office of the Purchaser has no bearing on the invoicing.

ii. While claiming reimbursement of duties, taxes etc.(like GST) from the Purchaser, as and if permitted under the contract, the Supplier also agree and confirm that in case he gets any refund out of such taxes and duties from the concerned authorities at a later date, the Supplier shall refund to the Purchaser, the Purchaser's share out of such refund received by the Supplier. The Supplier shall also refund the appropriate amount to the Purchaser immediately on receiving the same from the concerned authorities.

iii. The Liquidated damages/penalty or any other recoveries should be shown as deductions on the invoice, and GST shall be applicable only the net balance payment due.

iv. GST shall be paid as per the rate at which it is liable to be assessed or has been assessed provided the provision of services is legally liable to such taxes and is payable as per the terms of the contract subject to the following conditions:

-The Purchaser shall not pay a higher GST rate if leviable due to any misclassification of HSN number or incorrect GST rate incorporated in the contract due to Supplier's fault. Wherever the Supplier invoices at GST rate or HSN number, which is different from that incorporated in the contract, payment shall be made as per GST rate, which is lower of the GST rates incorporated in the contract or billed.

- However, the Purchaser shall not be responsible for the Supplier's tax payment or duty under misapprehension of the law.

- In case of profiteering by the Supplier relating to GST tax, the Purchaser shall treat it as a violation of the code of integrity in the contract and avail any or all punitive actions thereunder, in addition of recovery and action by the GST authorities under the Act.

Sd/-
Chief General Manager, El.,
Procurement, BESCOM